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IN THE

Supreme Court of the United States

October Term, 1955.

No. .....

RAPHAEL KONIGSBERG,

Petitioner,

vs.

THE STATE BAR OF CALIFORNIA and the COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Preliminary Statement.

Petitioner has prayed for a Writ of Certiorari to review the denial of his application for admission to the State Bar of California. He asserts that his rights under the First, Fifth and Fourteenth Amendments have been infringed by respondents' failure to certify him to the Supreme Court of California as a person qualified for admission to the Bar.

It is clear that the Fifth Amendment is not applicable to State action. The First Amendment is applicable only to the extent that it is incorporated in the Fourteenth Amendment. Respondents, therefore, will limit their arguments to the Fourteenth Amendment. They believe that the issues before this Court will be clarified thereby.

Brock v. North Carolina (1953), 344 U. S. 424;
Burstyn v. Wilson (1951), 343 U. S. 495.

I.
Jurisdiction.

Petitioner claims jurisdiction under 28 U. S. C. 1257. For the reasons set forth in Section V below, respondents deny jurisdiction on the grounds that:

1. The Federal question was not duly presented to the Supreme Court of the State of California.

2. The record fails to show that the Federal issue was necessary to the decision of the Supreme Court of the State of California.

II.
Constitutional and Statutory Provisions Considered.

The Fourteenth Amendment provides:

> "* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The basic act governing admission to the bar in the State of California is to be found in the Business and Professions Code of the State of California. The principal sections involved are Sections 6060 and 6064.1. These sections read as follows:

> "Section 6060. QUALIFICATIONS FOR APPLICANTS:
>
> "To be certified to the Supreme Court for admission and a license to practice law, a person who does not comply with Section 6062 shall:
>
> (a) Be a citizen of the United States.
>
> (b) Be of the age of at least 21 years.

(c) Be of good moral character.

(d) Have been a bona fide resident of this State for at least three months immediately prior to the date of his final bar examination . . ."

"Section 6064.1. ONE ADVOCATING THE OVERTHROW OF GOVERNMENT NOT TO BE ADMITTED:

"No person who advocates the overthrow of the Government of the United States or of this State by force, violence, or other unconstitutional means, shall be certified to the Supreme Court for admission and a license to practice law. (Added by Stats. 1951, Ch. 179, Sec. 1.)"

III.

Questions Presented.

1. Where petitioner's Brief before the California Supreme Court completely failed to raise or discuss any constitutional issue, can such issue thereafter be raised before this Court?

2. Will this Court grant certiorari where the decision of the Supreme Court of the State of California is fully supported by an independent non-Federal ground?

3. Has petitioner raised a substantial Federal question?

4. Did the Committee of Bar Examiners violate petitioner's constitutional rights by considering newspaper articles written by petitioner in which he made irresponsible and unfounded attacks on the character and integrity of this Court and other respected persons?

5. Were petitioner's constitutional rights violated by the consideration by the Committee of Bar Examiners (to the extent that it was relevant to the issues of petitioner's good moral character and his advocacy of the

violent overthrow of the Government) of evidence that petitioner was a member of, and in active and sympathetic association with the Communist Party?

6. Does the State Bar Act of California violate due process of law by requiring an applicant for admission to the Bar to bear the burden of proving that he does not advocate the violent overthrow of the Government?

IV.

Statement of the Case.

The Practice of Law in the State of California has, for many years, been governed by the State Bar Act set forth in Sections 6000 through 6154 of the California Business and Professions Code. The State Bar is governed by the Board of Governors (Sec. 6010). Under the powers given it (Sec. 6046) the Board of Governors has established the Committee of Bar Examiners of the State of California with the duty:

> "(a) To examine all applicants for admission to practice law.
>
> "(b) To administer the requirements for admission to practice.
>
> "(c) To certify to the Supreme Court for admission those applicants who fulfill the requirements provided in this chapter."
>
> Calif. Bus, and Prof. Code, Sec. 6046.

Sections 6060 through 6068 set forth the requirements for admission to the practice of law. These include the requirements that the applicant:

1. Shall be of good moral character (Sec. 6060(c)).

2. Shall not advocate the violent overthrow of the Government (Sec. 6064.1)).

3. Shall take an oath to support the Constitution of the United States and the Constitution of the State of California (Sec. 6067).

In accordance with Section 6047, the Committee of Bar Examiners, with the approval of the Board of Governors, have adopted Rules Regulating Admission to Practice Law to supplement the statutory provisions.

Petitioner does not assert that he was, in any manner, denied a fair hearing in accordance with the statutory procedures and administrative rules by either the Southern Subcommittee or the Committee of Bar Examiners. On the contrary, both he and his attorney affirmed (and the record clearly shows) that he was given a full and fair hearing and every opportunity to present his case [Ex. B, pp. 54 to 56].

In accordance with the Rules Regulating Admission to Practice Law (Rule X), petitioner was confronted with the evidence bearing adversely on his qualifications [Ex. A, pp. 7, 15 and 62 *et seq.*]. Petitioner was in no way restricted at the hearings and was allowed to produce any evidence or make any statements which he deemed relevant to his qualifications for admittance to the California Bar. All such evidence was considered by the Committee of Bar Examiners.

The evidence most directly relevant to the Committee's determination that petitioner had failed to establish that he was qualified for admission to the Bar is summarized below:

1. Twenty-one photostatic copies of the editorial pages of the California Eagle (a newpaper distributed primarily to the Negro population of Los Angeles) covering dates from July 28, 1950 through December, 1950, were intro-

duced in evidence by the Committee [Ex. 1]. Petitioner himself subsequently introduced fifty-one of his California Eagle articles appearing between April 27, 1950 and April 19, 1951 [Ex. 6]. These articles consistently followed the Communist Party line, and in doing so, violently attacked the Supreme Court of the United States and other government leaders who acted contrary to Communist wishes. Respondents hope that members of this Court will have a chance to examine the articles themselves, but for those who cannot, a few quotations will illustrate their nature:

> "When the Supreme Court of these benighted states can refuse to review the case of the Hollywood Ten—thus making that high tribunal an integral part of the cold war machine directed against the American people—then the enemies of democracy have indeed won a major victory. When the commanders of the last legal bulwark of our liberties sell out to the enemy, then the fascists have gone far, much farther than most people think. He who cannot see the dangerous damnable parallel to what happened in Germany is willfully blind.
>
> "When the Supreme Court in effect accepts and sanctions the treasonous thinking of the Tenneys and Rankins and McCarthys as basic to American patriotism, the august justices—who took a sacred oath to defend our constitution—are guilty of subverting both the spirit and the letter of that great document. What a sordid role for the court of Brandeis and Holmes!" (May 11, 1950.)
>
> "Traitor! Traitor!
>
> "Betrayal is in the air. Judges, with impunity, violate our constitutional rights—and editors honor them for it. Stool pigeons are the new national

heroes, and hypocrisy has been raised to the level of national policy.

"The president violates his oath of office by dragging us into war—and the nation's spiritual leaders applaud. But when the federal government betrays its trust in failing to defend Negro citizens from the Southern lynchers, the same leaders are dumb as the dead." (March 29, 1951.)

"Not all the criminal gangs in American history put together were as great a danger to our country's welfare as are the generals who today urge that American youth be trained as 'killers.' No thieves were ever so corrupt as the Hoovers and Harrimans who say that to preserve the 'American way of life' we must choose guns instead of butter—who spend millions in poison gases and not a dollar for a cancer cure." (October 5, 1950.)

"We must also arm ourselves with the truth about the world's daily events. This will be found only in such publications as the California Eagle, People's World, National Guardian and the new negro monthly 'Freedom' and in the radio programs of an Averill Berman." (February 2, 1951.)

Petitioner generally refused to answer questions designed to ascertain whether he would write such irresponsible articles today and whether he had any evidence to support his charges when he made them. Thus, for example, he was asked:

"Would you today charge the Supreme Court of the United States with selling out to the enemy as you did in your May 11, 1950 article? [Exhibit B, pages 32, 33.]"

"Have you any evidence to support your statement that the Supreme Court sold out to the enemy? [Exhibit B, page 33.]"

And in each case refused to answer.

2. The transcript of petitioner's appearance before the California Senate Fact Finding Committee on Un-American Activities (commonly known as the "Tenney Committee") [Ex. 2], and petitioner's written statement to that Committee [Ex. 3] were introduced in evidence. This latter statement read in part:

". . . I have been studying the deeds of the rulers of our country and their representatives—of which the Tenney Committee is an example—and with deepening horror I am forced to conclude that it is you who are the real enemies of our country and world peace. You, the financial-military bipartisan cabal, are the subversive Americans.

* * * * * * * *

"As a Jew, I accuse you of planning an American in which my people can find no security. You are capable of doing to us what the Nazis did.

"As a veteran, I accuse you of betraying all the promises our government made to Americans when we went to war. You have squandered the glorious opportunities our war sacrifices gave our nation to build world peace and a better America. You have undermined our pride in our country. You are diabolically creating disillusionment, despair and spiritual decay, to prepare a soil in which facist ideas can flourish—and democracy die.

"As a citizen, I accuse you of shaming my country before the liberty-loving peoples of the earth. You have made America, formerly honored as the savior of democracy, the most feared and hated nation. What a spectacle you make of us: the most powerful

nation on the globe claiming to be defenseless, terrified of decency and progress and every free idea. You have corrupted our magnificent war aims and turned them into their opposites. You are undermining our faith in the democratic form of government. You are conspiring to annihilate America if need be to achieve your goals.

"In discharge, therefore, of my responsibility as a citizen, I do hereby declare war without quarter on you un-Americans, the enemies of my country, my people, and democracy. I pledge my word to use every democratic means to defeat you."

Petitioner was questioned concerning these Exhibits and generally refused to answer any questions disassociating himself from the Communist Party and its front organizations, or indicating that he had any basis for his statements or that he would not make such statements today.

3. Mrs. Alice Bennett appeared before the Committee [Ex. A, pp. 62, *et seq.*], identified the petitioner, and testified in his presence that in 1941 she had been a member of the Communist Party and had seen petitioner at meetings of a cell or unit of the Party over a period of months [Ex. A, pp. 62, 63, 76, 77]. This unit was small and included only six or seven people. Although by examination and argument petitioner attempted to cast doubts on her veracity and memory, he never directly questioned the truth of her disclosure. In the Committee hearing petitioner was directly asked whether he wished to deny any part of her testimony [Ex. B, p. 35]. His only reply was that the question related to opinions, beliefs and political affiliations and was beyond the power of the Committee to ask.

The principal contrary evidence produced by petitioner was a series of letters by persons stating that they believed Mr. Konigsberg to be a person of good moral character [Ex. E]. These letters were considered by the Committee. However, their persuasiveness was limited since none of them were directed to, or showed any knowledge of, the specific matters causing the Committee to have doubts concerning petitioner's qualifications (Resp. Br. in the California Supreme Court, p. 31, *et seq.*).

At the Subcommittee hearings petitioner answered several of the Subcommittee's questions. Thus, for example, he stated that the totalitarian form of government was repugnant to him [Ex. A, p. 26], but his subsequent testimony [Ex. A, p. 27, *et seq.*] and other evidence in the record [*e.g.*, Exs. 1 and 3] made it clear that he did not consider Russia as having a totalitarian form of government but that the United States did. However, petitioner's general position throughout the hearings (and particularly before the full Committee) was that any questions in any way connected with his beliefs or associations would not be answered. Thus, he refused to answer not only whether he was now or had ever been a member of the Communist Party [Ex. B, pp. 37 and 38], but refused to answer questions concerning his membership in any other organization [Ex. B, p. 22]. Similarly, he refused to indicate whether he had had any evidence to support his attack on the character and integrity of the Supreme Court and other governmental officials and whether he would make such unsupported attacks today [*e.g.*, Ex. B, pp. 32 and 33].

The Committee of Bar Examiners considered all relevant evidence before it, including the demeanor of the

witnesses, and concluded that petitioner had not sustained the burden of proof:

1. That he was possessed of the good moral character required by Section 6060(c) of the State Bar Act, or

2. That he had complied with the provisions of Section 6064.1 of said Act.

In accordance with California Business and Professions Code, Section 6066, this determination was reviewed and sustained without opinion by the California Supreme Court.

V.

Reasons Why Petitioner Has Not Properly Claimed the Jurisdiction of This Court.

Respondents do not lightly question the jurisdiction of this Court in a matter involving an assertion that petitioner has been denied the privilege to practice law in violation of the Fourteenth Amendment. However, jurisdiction is so clearly lacking in the present case that respondents would be remiss in their duties if they did not raise the issue.

In order to invoke the jurisdiction of this Court, petitioner must show:

1. That a Federal question was duly presented to the highest Court of the state, and

2. That the decision of the highest Court of the state actually decided the Federal question or that judgment as rendered could not have been given without deciding it.

Southwest Bell Telephone Co. v. State of Oklahoma (1938), 393 U. S. 206;

Lynch v. New York (1934), 293 U. S. 52;

Crowell v. Randall (1836), 10 Pet. 368.

Petitioner has failed to show either.

At the hearings petitioner repeatedly claimed a First Amendment privilege not to answer the Committee's questions. However, the only presentation of constitutional issues before the California Supreme Court is found at pages 4 and 5 of the Petition.

Once having summarily raised these issues, petitioner completely abandoned them. Respondents have reread petitioner's 44-page Brief before the California Supreme Court. They have looked in vain for a single reference to any violation of petitioner's constitutional rights. Beginning at page 29 of his Brief, petitioner contended that "Respondent cannot base its denial of admission upon the fact that this petitioner declined to answer certain questions." If petitioner felt he had constitutional objections of any real substance, surely he would have raised them at this point. But, even here, peitioner argued only the undesirability of respondent's action and utterly failed to urge any constitutional objections to it.

We cannot only conclude that petitioner felt the constitutional issues were of so little substance that they did not warrant being mentioned in his Brief to the California Supreme Court. Now that he has exhausted his other arguments and can have no further appeal without the constitutional issues, they suddenly assume great importance to him. But this Court has wisely protected itself against such conduct by long ago establishing the rule that if the constitutional issues are not duly presented to the Court below, they may not be urged before this Court.

Respondents submit that the present case is within that rule and the jurisdiction of this Court should be denied.

McGoldrick v. Compagnie General Trans. (1940), 309 U. S. 430;

Hulbert v. City of Chicago (1906), 202 U. S. 275;

Home Ins. Co. v. Dick (1930), 281 U. S. 397;

Dewey v. City of Des Moines (1899), 173 U. S. 193;

Keokuk v. People of Illinois (1900), 175 U. S. 626.

However, even if we assume that the constitutional issues were properly presented to the Supreme Court of California, petitioner has utterly failed to show that they were decided by that Court or necessary to its decision. On the contrary, there is every indication that the California Supreme Court's decision was based on non-Federal grounds.

As already indicated, petitioner's Brief before the California Supreme Court did not argue the existence of a constitutional issue. His position was that respondents had erred in refusing his certification because:

1. He had fulfilled the burden of proving his good moral character.

2. (a) The burden of proving that he advocated the violent overthrow of the Government (*i. e.*, that he was not qualified under Business and Professions Code, Section 6064.1) was on respondents.

(b) Even if petitioner had the burden of proof under Business and Professions Code, Section 6064.1, he had met this burden.

3. Respondents violated their own Rule X by failing to advise petitioner of the information adverse to his good moral character.

4. The Committee improperly applied the statutory requirements by basing its decision on petitioner's political, social and economic beliefs.

Thus, petitioner's Brief was concerned entirely with questions of state law and no Federal issue was suggested. Respondents submit that the decision of the California Supreme Court could and did rest on these non-Federal issues.

However, there is no need to engage in speculation on this point. It is well settled that petitioner cannot claim the jurisdiction of this Court unless he has affirmatively established that the decision below necessarily rested on the constitutional issue which he now urges. If the decision below could have rested on either a Federal or a non-Federal ground, petitioner has not established the jurisdiction of this Court.

Stembridge v. Georgia (1951), 343 U. S. 541;
Fox Film Corp. v. Muller (1935), 296 U. S. 207;
Enterprise Irr. Dist. v. Farmers Mut. Canal Co. (1916), 243 U. S. 157.

It may be added that not only did an adequate non-Federal ground exist, but the decision of the California Supreme Court necessarily rested on this ground and not on any substantial constitutional issue.

The gist of petitioner's case before this Court is that his constitutional rights were violated because he was denied admission on the basis of his social, political and economic beliefs. Respondents specifically stated to the

California Supreme Court that their determination did not rest on petitioner's political, social and economic beliefs:

> "Respondents wholeheartedly agree with petitioner that one's political, social and economic beliefs are not, and should not, be a test for admission to the Bar. Such beliefs were not the basis for refusing petitioner's application. Evidence before the Committee indicated that petitioner was actively associated with groups and persons known to perform and condone immoral acts (under any reasonable definition of the term 'immoral') and to advocate the violent overthrow of the Government by force and violence. In addition, petitioner's actions in apparently making irresponsible attacks on the Supreme Court of the United States and other responsible government officials raised additional doubts whether petitioner could be said to be 'entitled to the high regard and confidence of the public.' It was these matters and not political, social or economic beliefs which caused the Committee concern and required additional inquiry. The Committee's questions were directed to this end. Since petitioner refused to answer these questions, the Committee never reached the question whether an applicant who is a member of the Communist Party but convincingly disassociates himself from personal participation in their immoral or illegal acts should be admitted to the Bar." (Pp. 14 and 15 of Resp. Br. before the Supreme Court of the State of California.)

Thus, even if we could otherwise have assumed that the California Supreme Court might have determined that social, economic and political views were relevant to the question of good moral character and advocacy of governmental overthrow, in view of respondents' disclaimer the California Supreme Court necessarily determined that,

ignoring all evidence of petitioner's social, political and economic views, there was sufficient evidence in the record to support the Committee's determination. Since no constitutional issue of any substance can be raised concerning this evidence, respondents respectfully urge that the jurisdiction of this Court has not, and cannot, be shown by petitioner.

VI.

Reasons Why Certiorari Should Not Be Granted.

Even were the jurisdictional requirements ignored, petitioner has not shown grounds to warrant certiorari:

Respondents would be among the first to denounce any State which refused to admit a qualified applicant to the Bar because his social, economic or political views deviated from those of the examining committee. We would have no hesitation in declaring that such action should be declared unconstitutional by this Court. Should an applicant appear before the Committee of Bar Examiners of the State of California and testify that he was a philosophical Communist, but was not associated with the Communist Party and did not advocate the violent overthrow of the Government (and the record otherwise supported his testimony) respondents have little doubt that he should be and would be admitted to the California Bar. But, petitioner's arguments to the contrary notwithstanding, that is not the question before the Court in the present case.

Even if it is assumed that the Communist Party has certain legitimate functions as an expression of a particular political, social or economic viewpoint (respondents express no opinion as to the propriety of this assumption), it is well established that the Communist Party, and a

large portion of its members, advocate the overthrow of the Government by force and violence and use and condone immoral actions to accomplish this end. Most of the leaders of the Communist Party are now serving prison terms for violation of Federal laws. (Judicial and legislative determinations establishing the nature of the Communist Party and its unlawful objectives and methods are so well known that documentation is probably unnecessary, and hence has not been set forth in this Brief. Collections of such determinations can be found at pages 22 to 26 of respondents' Brief to the California Supreme Court and pages 800, *et seq.*, of *Black v. Cutter Laboratories* (1955), 43 Cal. 2d 788.) It is clear from the transcript of the hearings that evidence of petitioner's Communist affiliations was considered only because of its bearing on these improper activities. Moreover, respondents took note of the obvious irrelevancy of evidence of political, social and economic beliefs in their Brief to the California Supreme Court where they specifically stated that no evidence of petitioner's social, political or economic views was considered in their determination (Resp. Br. pp. 14-15, before the California Supreme Court quoted at page 15, *supra*). The decision of the California Supreme Court therefore necessarily determined that, apart from any evidence of political, social or economic beliefs, there was sufficient evidence in the record to sustain the Committee's determination.

Thus, not only is the record devoid of any indication that petitioner's politial, social and economic views were considered by the Committee, but, in view of the decision of the California Supreme Court, it is improper for petitioner to again attempt to argue that his political, social

and economic views were considered. The questions petitioner has prescented must therefore be rephrased as follows:

1. Did the Committee of Bar Examiners violate petitioner's constitutional rights by considering newspaper articles written by petitioner in which he made irresponsible and unfounded attacks on the character and integrity of this Court and other respected persons?

To ask this question is to answer it. They obviously did not thereby violate his constitutional rights.

2. Were petitioner's constitutional rights violated by the consideration (to the extent that it was relevant to the issues of petitioner's good moral character and his advocacy of the violent overthrow of the Government) by the Committee of Bar Examiners of evidence that petitioner was a member of, and in active and sympathetic association with the Communist Party?

Again, no real constitutional objection is presented. As discussed above, the Communist Party and many of its members are known to adocate unlawful objectives such as the violent overthrow of the Government and to use and condone immoral actions to accomplish these objectives. Sympathetic and active association with such an organization and such persons is relevant to a determination of an applicant's good moral character and whether he advocates the violent overthrow of the Government. This no more infringes an applicant's constitutional rights than considering his association with any other criminal or dissolute gang.

Similarly, consideration of petitioner's refusal to answer questions concerning his membership in the Communist

Party is an application of basic California rules of evidence and does not raise a constitutional issue.

Cal. Code Civ. Proc., Sec. 2065;

Estate of Gaines (1940), 15 Cal. 2d 255, 100 P. 2d 1055;

Estate of Pepper (1910), 158 Cal. 619, 112 Pac. 62.

Use of both of these types of evidence was clearly proper.

As was stated by this Court in sustaining the right of the City of Los Angeles to require, as a condition of employment, disclosure of past or present membership in the Communist Party:

> "We think that a municipal employer is not disabled because it is an agency of the State from inquiring of its employees as to matters that may prove relevant to their fitness and suitability for the public service. Past conduct may well relate to present fitness; past loyalty may have a reasonable relationship to present and future trust. Both are commonly inquired into in determining fitness for both high and low positions in private industry and are not less relevant in public employment."

Garner v. Bd. of Pub. Wks. of L. A., 341 U. S. 716, 720.

A similar thought was expressed in *Adler v. Board of Education* (1951), 342 U. S. 485.

> "* * * One's associates, past and present as well as one's conduct, may properly be considered in determining fitness and loyalty. From time immemorial, one's reputation has been determined in part by the company he keeps. * * *."

Adler v. Bd. of Education, 342 U. S. 485, 493.

See also:

Orloff v. Willoughby (1952), 345 U. S. 83.

It may be added that under the principles established in *Garner v. Board of Public Works of Los Angeles* (1953), 341 U. S. 716, California could properly require every applicant for admission to the Bar to disclose his past or present membership in the Communist Party and summarily refuse to admit any applicant who refused to make this disclosure. Under the principles of *American Communications Assn. v. Douds* (1949), 339 U. S. 382, California could properly disqualify any applicant who was knowingly a member of the Communist Party. Even were we to assume that these cases marked the outer most limits of permissible state action, respondents' actions are so obviously within these bounds as not to require further discussion. Respondents merely considered evidence of Communist Party membership to the extent that it was relevant to determination of petitioner's qualifications under the statutory standards.

3. Does the State Bar of California violate the process of law by requiring an applicant to bear the burden of proving that he does not advocate the violent overthrow of the Government.

Again, it seems clear that no substantial constitutional issue has been raised. However, this question is of such importance to the proper administration of the statutory requirements for admission both in California and other states that respondents will consider it in more detail.

In California (as in most, if not all, other states), it has long been established that the candidate for admission to the Bar bears the burden of proving that he complies

with each of the statutory requirements for admission. This has always been considered a reasonable and proper requirement and respondents are unaware of any prior cases seriously contesting its constitutionality. Petitioner does not attack the requirement that he must bear the burden of proving good moral character, but argues only that he should not be required to show that he does not advocate the violent overthrow of the Government.

Requiring the burden of proof to be born by the applicant is not only reasonable but necessary to the enforcement of the statutory requirement. The applicant, presumably has all of the information necessary to show that he does not advocate the violent overthrow of the Government freely available to him.

It may be added, in view of petitioner's assertions to the contrary, that the record makes it very clear that no unreasonable amount of proof was required of him.

Petitioner stated at the hearings that he did not advocate the violent overthrow of the Government. He produced no substantial supporting evidence. (Such evidence as he did produce is discussed in greater detail at pages 42, *et seq.*, of respondents' Brief before the California Supreme Court.) It is unnecessary to engage in an academic discussion of whether, with no other evidence in the record, respondents could constitutionally have refused to believe petitioner and reject his admittance under Section 6064.1. In the usual case where there is no evidence to the contrary, an applicant's unsupported statement that he does not advocate the violent overthrow of the Government is considered sufficient and it would have been so considered in this case. However, in the

present case there was substantial evidence to the contrary:

1. Articles in which petitioner specifically indicated that he was loyal only to governments of which he approved and would have no hesitation in following the example of our founding fathers and overthrowing the Government if he felt its officials were betraying the Constitution:

> "To consider loyalty to America as identical with loyalty to Truman, Dulles & U. S. Steel is, to me, the ultimate in sacrilege. Truman, Dulles & U. S. Steel—saboteurs of Americans' constitutional liberties, of peoples' self-government everywhere, of the hopes promised mankind by victory in the last war! Lynchers of Americans and engineers of the doctrine of guns over butter!
>
> * * * * * * * *
>
> "Loyalty to America, in my opinion, has always meant adherence to the basic principles of our Constitution and Declaration of Independence—not loyalty to any man or group of men. Loyalty to America means belief in and militant support of her noble ideals and the faith of her people. Loyalty to America today, therefore, must mean opposition to those who are betraying our country's traditions, who are squandering her manpower, her honor and her riches." (California Eagle Article 7:38/50.)

2. Other evidence indicating that petitioner was in sympathy and active association with the Communist Party and its objective to violently overthrow the Government.

Respondents submit that there is no real question that, in the light of this evidence and petitioner's refusal to

amplify his unsupported declaration that he did not advocate the overthrow of the Government or to answer questions allowing the Committee to test his veracity, the Committee could constitutionally determine that he had not established his qualification for admittance to the Bar under Section 6064.1.

Respondents feel that the discussion above amply demonstrates that petitioner has raised no substantial Federal question. However, they wish to direct particular attention to this Court's very recent decision in *Re George Anastaplo.* The factual backgrounds of the *Anastaplo* and Konigsberg cases are very similar. George Anastaplo was refused admittance to the Illinois Bar based largely on his refusal to answer questions concerning his membership in the Communist Party and the Committee's opinion that a member of the Communist Party could not in good faith take the oath to support the Constitutions of Illinois and the United States. (*In re George Anastaplo* (Ill. Sup. Ct., 1954), 121 N. E. 2d 826 at 828.) The Supreme Court of Illinois affirmed the Committee's action on the ground that membership in the Communist Party or known subversive "front" organizations were relevant to the inquiry into petitioner's fitness for admittance to the Bar, and his refusal to answer prevented the Committee from inquiring fully into his qualifications for admittance. It further determined that the Committee's inquiry about petitioner's "political affiliations and organizational memberships" was not unconstitutional as being in derogation of the First and Fourteenth Amendments.

In re George Anastaplo (Ill. Sup. Ct., 1954), 121 N. E. 2d 826.

This Court refused certiorari for want of a substantial Federal question.

Re George Anastaplo (1955), 348 U. S. 946, reh. den. 349 U. S. 908.

Respondents submit that petitioner has, at the most, done no more than re-present the issues raised in *Re George Anastaplo* and there determined by this Court not to present a substantial Federal question.

Respectfully submitted,

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